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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

No. CR S-04-0069 MCE

vs.

JEFFREY WELLS, LARRY J. WELLS,  
and HENRY M. KAISER,

Defendants.

STIPULATION AND  
ORDER TO CONTINUE HEARING  
DATES ON MOTIONS TO QUASH

Movants SureWest Communications ("SureWest") and Ernst & Young LLP  
("E&Y") (collectively referred to as "Movants") respectfully request that the Court continue the  
joint hearing on their motions to quash the subpoenas issued to each of them, presently set for  
July 12, 2005 at 2:00 p.m., to the date of July 21, 2005 at 2:00 p.m. Movants' request is made on  
the grounds that defendants Larry Wells and Jeffrey Wells ("defendants") have filed a last-minute  
opposition brief to both motions to quash.



1  
2 On April 19, 2005, SureWest filed a timely motion to quash the subpoena issued  
3 to it by defendant Larry Wells. Pursuant to Local Rule any opposition to SureWest's motion was  
4 due no later than May 3, 2005 (10 court days following service). L.R. Crim. 12-430(d). On May  
5 17, 2005, Ernst & Young filed a timely motion to quash the subpoena issued to it by defendant  
6 Larry Wells. Pursuant to Local Rule, any opposition to Ernst & Young's motion should have  
7 been filed by May 31, 2005 (10 court days following service). SureWest filed a joinder in Ernest  
8 & Young's motion on June 8, 2005. No opposition was filed by defendants with respect to either  
9 motion to quash until more than a month later, late in the afternoon on July 6, 2005. Hearing on  
10 both motions is presently set for Tuesday, July 12, 2005 at 2:00 p.m.

11 Defendants' opposition is weeks late, and comes after SureWest already filed a  
12 reply brief pointing out the complete absence of any opposition (SureWest's Reply brief was filed  
13 on June 9, 2005 and has gone unanswered for virtually a month). There was never any  
14 agreement between the parties with respect to the belated filing of the opposition. Defendants'  
15 opposition is 22 pages long and includes a separate declaration from defense counsel with new  
16 evidence.

17 A brief continuance is necessary in order to provide Movants' with a reasonable  
18 period of time to respond to the untimely opposition sufficiently in advance of the hearing, and  
19 for the Court to be able to give full consideration to such matters prior to the hearing on the  
20 motions.

21 Movants' counsel has contacted the Court's clerk to determine the Court's  
22 availability and was advised that the Court was available on July 21, 2005 at 2:00 p.m. Movants'  
23 counsel also contacted William Portanova and Wayne Ordos, counsel for defendants Larry Wells  
24 and Jeff Wells, and confirmed that they both agree to the continuance and are available on July  
25 21, 2005.



Because of the late nature of the opposition and the pending hearing date of July 12, 2005, Movants have filed this stipulation as promptly as possible. There is no trial date currently set in the underlying criminal action.

Accordingly, Movants hereby stipulate and request that the Court continue the presently set hearing date of July 12, 2005 on Movants' motions to quash to July 21, 2005 at 2:00 p.m. Movants will file and serve their responses to the defendants' late opposition no later than Monday, July 18, 2005.

COOPER, WHITE & COOPER LLP

DATED: July 7, 2005

By: \_\_\_\_\_/s/ Mark Tuft\_\_\_\_\_

Mark Tuft  
Attorneys for Movant SureWest Communications

HELLER EHRMAN LLP

DATED: July 7, 2005

By: \_\_\_\_\_/s/ Megan Dixon\_\_\_\_\_

Megan Dixon  
Attorneys for Movant Ernst & Young LLP

**IT IS SO ORDERED.**

DATED: July 7, 2005.

  
UNITED STATES MAGISTRATE JUDGE